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RUEAWJA/DEPT OF JUSTICE WASHDC  
RHEHNSC/NSC WASHDC  
RUEAIIA/CIA WASHDC  
RUEATRS/DEPT OF TREASURY WASHDC

C O N F I D E N T I A L SECTION 01 OF 03 JAKARTA 002953

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DEPT FOR EAP, EAP/MTS, INR/EAP, INL FOR BOULDIN  
DEPT FOR EEB/IFD/OMA  
DOJ/OPDAT FOR LEHMANN/ALEXANDRE/BERMAN  
SINGAPORE FOR BAKER  
TREASURY FOR IA-BAUKOL  
DEPT PASS FEDERAL RESERVE SAN FRANCISCO FOR FINEMAN  
DEPT PASS EXIM BANK  
DEPT PASS USTR FOR DKATZ, RBAE  
NSC FOR EPHU

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TAGS: [PGOV](#) [KJUS](#) [KCOR](#) [KMCA](#) [EAID](#) [ID](#)  
SUBJECT: INDONESIA'S SUPREME COURT -- LACK OF  
ACCOUNTABILITY OVERSHADOWS REFORMS

REF: A. JAKARTA 2722  
[1](#)B. JAKARTA 2688  
[1](#)C. JAKARTA 514

Classified By: Pol/C Joseph Legend Novak, reasons 1.4 (b,d).

[1](#)1. (C) SUMMARY: Indonesia's Supreme Court has made progress in implementing reforms designed to improve the efficiency and professionalism of the judiciary. The Court's potential remains unfulfilled, however, largely due its reluctance to tackle the issue of judicial accountability. While moving forward on providing information to the public and advancing a code of ethics for judges, the Court has resisted efforts to subject the judiciary to external supervision and appears to be in denial about the extent of judicial corruption. USG assistance is helping the reform process. END SUMMARY.

#### TENTATIVE PROGRESS

[1](#)2. (SBU) Indonesia's judicial sector has been repeatedly cited by business leaders, NGOs and international financial institutions as inefficient and prone to corruption. Legal uncertainty has also featured prominently in discussions regarding Indonesia's investment climate. In 2004, the Supreme Court leadership responded to these deficiencies by initiating a reform program which focused on improving court operations in the areas of case management, information technology, training, human resources, budgeting and supervision. The program was greeted enthusiastically by observers and has attracted significant donor funding from the European Union, Australia and, beginning in 2007, the U.S. Millennium Challenge Corporation (MCC).

[1](#)3. (SBU) The Court reform program has boasted various successes since its inception. Over the past year alone, the Court has seen a significant increase in the number of cases handled, launched a web site which for the first time will allow the public to review actual Court decisions, and drafted a more open policy on information transparency. The Court is also implementing reforms meant to improve the quality of Court staff. Perhaps most important, the Court

published a new code of judicial ethics and is actively working, with MCC support, to socialize the new rules around the country. In addition, the Court volunteered to be one of five state bodies participating in a pilot bureaucracy reform program led by the Ministry of Finance. The program is considered to be a prototype for an eventual government-wide bureaucratic reform plan.

#### THERE ARE CHALLENGES

¶4. (SBU) Despite these achievements, a growing chorus of judicial activists and NGOs have pronounced the Supreme Court's reform efforts a failure and are calling for a review of Court leadership. The main issues, according to observers, are the Court's refusal to submit to external supervision and its failure to address the issue of corruption within the judiciary. This growing consensus was mirrored in a recent poll in which 70% of respondents had a negative image of the Court, up from 40% in 2004. Judicial observers say that judicial corruption is as bad today as it was under the Suharto regime, an impression corroborated by Transparency International's (TI) 2007 country report.

¶5. (SBU) The Court has doggedly tried to keep other institutions from monitoring its activities. Under a 2003 amendment to the Indonesian Constitution, the authority to supervise judicial behavior was taken from the Court and given to a new institution, the Judicial Commission. However, the Court actively opposed the Commission's authority, and in 2006 the Constitutional Court stripped the Judicial Commission of its supervisory powers (ref C) at the Court's behest. (Note: The Constitutional Court is another influential judicial body, but with a more limited mandate.)

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Similarly, the Court refused earlier this year to allow the Supreme Audit Board (BPK) access to records of fees collected from plaintiffs. The Court claimed, somewhat incredibly, that the fees did not constitute "state revenue" (ref A). Only the direct intervention of President Yudhoyono facilitated a compromise. Court critics, however, complained that the compromise allowed the Court to evade accountability for what was, in fact, an untenable legal position.

#### PROTECTING ITS OWN?

¶6. (SBU) With the Judicial Commission decision, supervision of Indonesia's 6,000 judges is now back in the hands of the Court itself. (Note: This is in fact the practice in many countries, including the U.S.) Court critics, however, claim that the Court is reluctant to take action against its own. According to the Court's own records, 51 court employees, including 16 judges, were subject to disciplinary action across the country in 2006. In most of these cases, however, the punishments were extremely light: a written reprimand or a denial of promotion. At the Supreme Court level, ten staff have been dismissed since 2006, but most of these were indicted on corruption charges by the Corruption Eradication Commission before the Court took any action.

¶7. (C) Many justices seem to be in denial about the corruption problem. Privately, justices claim that, evidence to the contrary, the issue is overblown. One Justice told poloff that the overwhelming majority of judges were honest and that when bribes were solicited it is mainly by court clerks, not by judges. (Note: One lawyer scoffed at this, telling us that judges used clerks to solicit bribes in order to provide plausible deniability.) Another Justice complained to us that police and prosecutors were corrupt, too, and that judges were being unfairly singled out in the media.

#### PROTECTING THE POWERFUL?

¶8. (C) The public's perception that the Court protects corruptors has been strengthened by a series of controversial

decisions involving high officials, particularly former president Suharto and his family. In 2001, the Court granted Suharto complete immunity from criminal prosecution when it ruled that he could not be brought to trial due to health concerns. More recently, decisions which have sparked controversy include:

-- a 2004 decision overturning a lower court's conviction of former Parliament Chairman and Golkar Party chief Akbar Tandjung on corruption charges;

-- a 2005 decision reducing the sentence levied against Tommy Suharto, the notorious son of the former president, from 15 years to 10. Tommy was convicted of ordering the murder of one of the Supreme Court's own justices;

-- a 2006 decision upholding a lower court decision that over US\$1 billion in bonds issued by Asia Pulp and Paper were illegal and did not have to be repaid. The bonds followed a standard format which had been used in other Indonesian investments. The decision was a major blow to foreign investor confidence;

-- a 2007 decision ordering TIME magazine to pay Suharto \$106 million in damages for defamation of character (ref B; TIME--which is fighting the ruling--was punished for publishing an article detailing the extent of Suharto's corruption).

#### AN INCOMPLETE TRANSITION

19. (C) Court reform is clearly a long-term project. The new judicial code of conduct is a major step forward on

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accountability and the Court is working to ensure that the new standards have teeth. USG assistance of approximately \$14 million is actively supporting efforts to strengthen the Court's budget practices, improve human resource management and make Court decisions and processes more transparent. The problems that remain, however, are serious. The impact of the Court's shortcomings affect not only the judiciary, but also the investment climate, accountability for human rights violations, and the overall reform process. The Court is moving forward on many fronts, but it needs to do more and quickly.  
HUME